

October 20, 2022

Board of County Commissioners  
Clackamas County

Approval of an Intergovernmental Agreement with the State of Oregon, Oregon Health Authority for Behavioral Health Housing Investment Funds. Agreement value is \$4,704,837.17 for 19 months. Funding is through the State of Oregon, Oregon Health Authority.

No County General Funds are Involved.

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | To provide an array of supported housing and residential treatment to individuals who experience mental health and substance use disorders. |
| <b>Dollar Amount and Fiscal Impact</b> | \$4,704,837.17  |
| <b>Funding Source</b>                  | No County General Funds are involved. Funding is provided through the State of Oregon, Oregon Health Authority.                             |
| <b>Duration</b>                        | Effective upon signature through April 1, 2024.   |
| <b>Previous Board Action</b>           | Lifecycle reviewed and approved June 16, 2022, Agenda Item 20220616 III.B.2. Issues October 18, 2022  |
| <b>Counsel Review</b>                  | Review and approved September 26, 2022, Andrew Naylor and Kathleen Rastetter  |
| <b>Procurement Review</b>              | Was this item reviewed by Procurement? No. Procurement does not review funding agreements.  |
| <b>Strategic Plan Alignment</b>        | Ensuring safe, healthy, and secure communities through the provision of mental health and substance use services.                           |
| <b>Contact Person</b>                  | Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305   |
| <b>Contract No.</b>                    | 10816   |

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing, and Human Services Department requests the approval of an intergovernmental agreement with the Oregon Health Authority for Behavioral Health Housing Investment Funds. Oregon Health Authority has allocated \$4,704,837.17 for Clackamas County to expand supported housing and residential treatment services for individuals who are experiencing mental health and substance use disorders. Funds can be used to repurpose or build new secure residential treatment facilities, residential treatment homes, and other supported housing; offer supportive services and treatments; provide short-term shelter beds and long-term stable rental assistance, helping to address disparities in housing access faced by people experiencing mental illness and substance abuse disorders; and deliver new outreach and engagement items such as food and clothing to assist houseless individuals with their immediate needs.

*Healthy Families. Strong Communities.*

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Clackamas.us/h3s

Funds require partnership with community-based organizations, including culturally-specific providers, housing authorities, coordinated care organizations, community action agencies, and social service agencies.

**RECOMMENDATION:**

Staff recommends Board approval of this Agreement.

Respectfully submitted,

*Rodney A. Cook*

Rodney A. Cook, Director  
Health, Housing & Human Services Department



**Grant Agreement Number 177736**

**STATE OF OREGON  
INTERGOVERNMENTAL GRANT AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Agreement is between the State of Oregon, acting by and through Oregon Health Authority (OHA) and the OHA's Health System Division:

**Health Systems Division  
500 Summer St SE, E86  
Salem, Oregon 97301**

hereinafter referred to as "OHA," and

**Clackamas County  
2051 Kaen Rd Suite 154  
Oregon City, OR 97045  
Attention: Mary Rumbaugh  
Telephone: 503-742-5335  
E-mail address: [bhcontracts@co.clackamas.or.us](mailto:bhcontracts@co.clackamas.or.us)**

hereinafter referred to as "Recipient."

**RECITALS**

WHEREAS, the Oregon State Legislature, for the biennium ending June 30, 2023, appropriated \$100,000,000 out of the General Fund for increasing behavioral health housing in House Bill 5202, section 364.

WHEREAS, the Oregon State Legislature's Joint Committee On Ways and Means stated in the bill's Budget Report and Measure Summary that the OHA was appropriated money "for

distribution to community mental health programs (CMHP) and related administrative support in OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”

WHEREAS, the OHA issued a Request for Applications to the CMHPs. The OHA has reviewed all the applications received and intends to disburse the grant awards. NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Effective Date and Duration.**

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by the Oregon Department of Justice (the “Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **April 1, 2024**. Agreement termination shall not extinguish or prejudice OHA’s right to enforce this Agreement with respect to any default by Recipient that has not been cured.

**2. Agreement Documents.**

a. This Agreement consists of this document and includes the following listed exhibits and attachments, which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Program Description
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions (including Attachment 1)
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Insurance Requirements
- (6) Exhibit D: Approved Budget

There are no other Agreement documents unless specifically referenced and incorporated into this Agreement.

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The documents comprising this Agreement shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits B, A (including Exhibit D to the extent incorporated therein), and C.

**3. Grant Disbursement Generally.**

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is **\$4,704,837.17**. OHA will not disburse grant funds to Recipient in excess of the not-to-exceed amount and, notwithstanding any other provision of this Agreement, will not disburse grant funds until this Agreement has been signed by all Recipient(s) and, when required, approved by the Oregon Department of Justice. OHA will disburse the grant to Recipient as described in Exhibit A.

**4. Contractor or Subrecipient Determination.**

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

- Recipient is a subrecipient
- Recipient is a contractor
- Not applicable

**5.** Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: N/A

**6. Recipient Data and Certification.**

a. **Recipient Information.** Recipient shall provide the information set forth below.

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION**

**Recipient Name (exactly as filed with the IRS):** \_\_\_\_\_

Clackamas County

Street address: 2051 Kaen Road, Suite 154

City, state, zip code: Clackamas, OR 97045

Email address: BHContracts@clackamas.us

Telephone: ( 503 ) 742-5335 Facsimile: ( 503 ) 742-5312

**Business Designation: (Check one box):**

- Professional Corporation
- Nonprofit Corporation
- Limited Partnership
- Limited Liability Company
- Limited Liability Partnership
- Sole Proprietorship
- Corporation
- Partnership
- Other

**Recipient Proof of Insurance.** Recipient shall provide proof of all insurance listed and required by Exhibit C in accordance with the deadline established in Exhibit C, Section 8.

b. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, each signatory for Recipient hereby certifies under penalty of perjury that:

- (1) Recipient is in compliance with all insurance requirements in Exhibit C of this Agreement and Recipient shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance in accordance with Exhibit C, Section 8. By certifying compliance with all insurance as required by this Agreement, Recipient acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. Recipient may also be in breach of the

Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;

- (2) The information shown in Section 6a. "Recipient Information", is Recipient's true, accurate and correct information;
- (3) To the best of the Recipient's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (4) Recipient is not subject to backup withholding because:
  - (a) Recipient is exempt from backup withholding;
  - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding;and
- (5) Recipient Federal Employer Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Recipient shall provide OHA with the new FEIN or SSN within 10 days.

**RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

7. **Signatures.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original. Copies of signature by facsimile, electronic scan, or other electronic means will be considered original signatures.

**Clackamas County**  
**By:**

\_\_\_\_\_  
Authorized Signature  
  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name  
  
\_\_\_\_\_  
Date

**State of Oregon acting by and through its Oregon Health Authority**  
**By:**

\_\_\_\_\_  
Authorized Signature  
Director of Business Operations  
Title

Mick Mitchell  
Printed Name  
  
\_\_\_\_\_  
Date

**Approved by: Director, OHA Health Systems Division**  
**By:**

\_\_\_\_\_  
Authorized Signature  
Director  
Title

Margie Stanton  
Printed Name  
  
\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Via e-mail by Wendy Johnson, Assistant Attorney General August 24, 2022; email in agreement file.

## EXHIBIT A

### Part 1 Program Description

1. **Eligible Program Activities:** Each of the following are eligible program activities and Grant funds may be expended for the costs of such activities, if such costs are in accordance with Recipient's budget approved by OHA, which is attached to this Agreement as Exhibit D, as it may be revised by Recipient and approved in writing from time to time by OHA.
  - a. Repurpose or build new secure residential treatment facilities, residential treatment homes, adult foster homes, supported housing units, and supportive housing units.
  - b. Operational and administrative costs to manage housing
  - c. Housing support services
  - d. Planning, coordination, siting, purchasing buildings/land (pre-build or renovation activities)
  - e. Subsidies for short-term shelter beds
  - f. Long-term rental assistance
  - g. Outreach and engagement items such as food or clothing to meet immediate needs for houseless individuals

### 2. Reporting Requirements

- a. **Monthly Reports.**
  - (1) Recipient shall prepare and electronically submit written monthly compliance reports to [hsd.contracts@oha.oregon.gov](mailto:hsd.contracts@oha.oregon.gov) describing the grant activities and progress to OHA if OHA is providing grant funds in the amount of \$100,000 or more that are to be used for the purchase or renovation of real property and the Recipient is in the property acquisition, construction, or redevelopment phases of the Project. Reports must be prepared using forms and procedures prescribed by OHA. Forms are located at <http://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>, and the procedures described in "HB 5202".
  - (2) Reports are due to OHA HSD on the 15<sup>th</sup> of the month for the previous month. The first report is due 60 days after the execution of this Agreement.



**b. Quarterly Reports.**

- (1) Recipient shall prepare and electronically submit written quarterly reports that describe the grant activities for the quarter and any other information that OHA may reasonably require
- (2) Reports are due to OHA HSD no later than April 15 (January 1- March 31), July 15 (April 1- June 30), October 15 (July 1- September 30), and January 15 (October 1-December 31) each year.
- (3) Reports shall demonstrate OHA HSD requirements of the continued use of property for the agreed purpose as defined in any Declaration of Restrictive Covenants executed and all other documents reasonably necessary to secure the performance of this Agreement, as determined by the Social Determinants of Health team of OHA.
- (4) Reports shall provide quarterly data as OHA HSD requests, including but not limited to bed/unit/client capacity by property/facility with their utilization rates and data on clients served by property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Recipient may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA HSD.

**Exhibit A**  
**Part 2**  
**Payment and Financial Reporting**

**1. Payment and Financial Reporting.**

- a. OHA no longer issues paper checks. To receive grant funding, Recipient must enroll in Electronic Funds Transfer (EFT), also known as direct deposit. To enroll, Recipient must submit a completed Direct Deposit Authorization Form found with OHA. If Recipient already has EFT set up for any type of payment that comes from the Oregon Health Authority, Recipient should not send in another form. Recipient may contact the EFT Coordinator at (503) 945-5710 for technical assistance. Due to the confidential nature of bank account information, Recipient should only provide bank information to the EFT Coordinator or OHA Financial Services.
- b. OHA will grant funds to Recipient, subject to the following:
- i. Grant funds may be expended only for costs that are directly and reasonably related to Eligible Program Activities provided under this Agreement and in accordance with the terms and conditions of this Agreement.
  - ii. Grant funds may be expended only for costs in accordance with Recipient's budget approved by OHA, which is attached to this Agreement as Exhibit D, as it may be revised by Recipient and approved in writing from time to time by OHA.
  - iii. Grant funds may not be used to supplant other funding sources.
  - iv. Grant funds may be expended for travel-related costs only in accordance with the requirements of the Oregon Accounting Manual applicable to travel-related costs, as the same may be amended from time to time.
  - v. Grant funds may only be used to cover Eligible Program Activities incurred during the period beginning from the Effective Date and ending December 31, 2023. A cost is considered to have been incurred if Recipient has incurred an obligation (as defined below) with respect to such cost by December 31, 2023. An "obligation" is an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.
  - vi. Grant funds awarded to Recipient may be adjusted among the Eligible Program Expenses as shown in Exhibit D up to 20%, without prior written approval by OHA, but Recipient shall promptly notify OHA in writing of such adjustment.
  - vii. Notwithstanding Section 1.b.vi. of this Exhibit A, Part 2, Grant funds may be used for administrative program costs up to but not to exceed 10%.

- c. OHA will disburse the grant funds to Recipient upon the Effective Date.
- d. Recipient must complete an “Oregon Health Authority Social Determinants of Health Expenditure Report” located at: <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. These reports must detail the use of grant fund expenditures with declining balances for each budget line and be submitted to OHA each quarter on the following schedule:

| <b>Fiscal Quarter</b>           | <b>Due Date</b> |
|---------------------------------|-----------------|
| First: July 1 – September 30    | October 30      |
| Second: October 1 – December 31 | January 30      |
| Third: January 1 – March 31     | April 30        |
| Fourth: April 1 – June 30       | August 20       |

## EXHIBIT A

### Part 3 Special Terms and Conditions

- 1. Real Property Purchase, Renovation, or Improvement.** Before grant funds in the amount of \$100,000 and above, paid to Recipient under this Agreement, are to be used for purchase or renovation of real property, Recipient shall notify OHA and subsequently execute all documents reasonably necessary to secure the real property funded with this Agreement, as determined by the Social Determinants of Health team of OHA, including but not limited to a Declaration of Restrictive Covenant for each property, of substantially the form attached hereto as **Attachment 1**. The obligations described in the documents executed under this Exhibit A Part 3, shall continue until the expiration term in such documents, and the parties agree such terms are not merged with the term of the Agreement expiration, i.e., on April 1, 2024.

**EXHIBIT B**  
**Standard Terms and Conditions**

**1. Governing Law, Consent to Jurisdiction.**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OHA or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a consent by the State of Oregon to the jurisdiction of any court or a waiver by the State of Oregon of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States, or otherwise. Recipient hereby consents to the exclusive jurisdiction of such courts, waives any objection to venue, and waives any claim that any such forum is an inconvenient forum.

**2. Compliance with Law.**

Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Recipient and this Agreement. Without limiting the generality of the foregoing: (i) the Recipient shall comply with Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA) and 42 CFR Part 2 to the extent they are applicable to the services provided by the Recipient; and (ii) no grant funds may be used for any harm reduction activities that would violate Oregon's drug paraphernalia law, ORS 475.525, including but not limited to the purchase or delivery of safe smoking supplies, drug testing strips, or devices used to prepare controlled substances, unless the Recipient maintains documentation that demonstrates the activities fall within an exemption under ORS 475.525(4) or (5), or the Recipient is a syringe service program providing sterile needles and syringes and other items as part of their activities, in accordance with ORS 475.757. Failure to comply with any of the foregoing requirements is grounds for termination of the grant.

**3. Independent Parties; Conflict of Interest.**

- a. Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- b. If Recipient is currently performing work for the State of Oregon or the federal government, Recipient by signature to this Agreement, represents and warrants that Recipient's participation in this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Recipient currently performs work would prohibit Recipient's participation under this Agreement. If

disbursement under this Agreement is to be charged against federal funds, Recipient certifies that it is not currently employed by the federal government.

**4. Grant Funds; Payments.**

- a. Recipient is not entitled to compensation under this Agreement by any other agency or department of the State of Oregon. Recipient understands and agrees that OHA's payment of grant funds under this Agreement is contingent on OHA receiving appropriations, limitations, allotments and other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to pay the grant funds to Recipient as set forth in this Agreement.
- b. Disbursement Method. Disbursements under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other OHA Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Recipient must provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Recipient must maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all disbursements under this Agreement. Recipient must provide this designation and information on a form provided by OHA. In the event that EFT information changes or the Recipient elects to designate a different financial institution for the receipt of any payment made using EFT procedures, Recipient will provide the changed information or designation to the EFT Coordinator identified in Exhibit A, Part 2, Section 1.

**5. Recovery of Overpayments.**

Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on termination or expiration of this Agreement ("Unexpended Funds") must be returned to OHA. Recipient shall return all Misexpended Funds to OHA promptly after OHA's written demand and no later than 15 days after OHA's written demand. Recipient shall return all Unexpended Funds to OHA within 14 days after the termination or expiration of this Agreement, as applicable. OHA, in its sole discretion, may recover Misexpended Funds or Unexpended Funds by withholding from payments due to Recipient such amounts, over such periods of time, as are necessary to recover the amount of the Misexpended Funds or Unexpended Funds. If Recipient objects to the amount withheld or proposed to be withheld, Recipient shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 13 of this Exhibit.

**6. Ownership of Work Product.** Reserved.

**7. Contribution.**

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the

"Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Recipient (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Recipient on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Recipient is jointly liable with the State (or would be if joined in the Third Party Claim), the Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Recipient on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Recipient on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that

the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

## 8. **Default; Remedies; Termination.**

a. Default by Recipient. Recipient shall be in default under this Agreement if:

- (1) Recipient institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (2) Recipient no longer holds a license or certificate that is required for Recipient to perform its obligations under this Agreement and Recipient has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or
- (3) Recipient fails to return Misexpended Funds or Unexpended Funds in accordance with Section 5 of this Exhibit B; or
- (4) Recipient commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform any obligation under this Agreement within the time specified herein or any extension thereof, or so fails to pursue performance of any obligation as to endanger Recipient's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice.

b. OHA's Remedies for Recipient's Default. In the event Recipient is in default under Section 8.a., OHA may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

- (1) termination of this Agreement under Section 8.e.(2);
- (2) withholding all or part of monies not yet disbursed by OHA to Recipient;
- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- (4) exercise of its right of recovery of Misexpended Funds or Unexpended Funds under Section 5 of this Exhibit B.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Recipient was not in default under Section 8.a., then Recipient shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 8.e.(1).

c. Default by OHA. OHA shall be in default under this Agreement if OHA commits any material breach or default of any covenant, warranty, or obligation under this



Agreement, and such breach or default is not cured within 30 calendar days after Recipient's notice or such longer period as Recipient may specify in such notice.

- d. Recipient's Remedies for OHA's Default. In the event OHA terminates this Agreement under Section 8.e.(1), or in the event OHA is in default under Section 8.c. and whether or not Recipient elects to exercise its right to terminate this Agreement under Section 8.e.(3), Recipient's sole remedy will be a claim for payment of grant funds for costs or expenses incurred and for which payment is authorized by this Agreement. In no event shall OHA be liable to Recipient for any expenses related to termination of this Agreement or for anticipated profits or loss.
- e. Termination.
- (1) OHA's Right to Terminate at its Discretion. At its sole discretion, OHA may terminate this Agreement:
    - (a) For its convenience upon 30 days' prior written notice by OHA to Recipient;
    - (b) Immediately upon written notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to pay the grant funds to Recipient as set forth in this Agreement;
    - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OHA's support of the program under this Agreement is prohibited or OHA is prohibited from paying for such support from the planned funding source; or
    - (d) Immediately upon written notice to Recipient if there is a threat to the health, safety, or welfare of any person receiving funds or benefitting from services under this Agreement, including any Medicaid Eligible Individual, under its care.
  - (2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Agreement, OHA may terminate this Agreement immediately upon written notice to Recipient, or at such later date as OHA may establish in such notice, if Recipient is in default under Section 8.a.
  - (3) Recipient's Right to Terminate for Cause. Recipient may terminate this Agreement upon 30 days' prior written notice to OHA or at such later date as Recipient may establish in such notice, if OHA is in default under Section 8.c. and OHA fails to cure such default within 30 calendar days after OHA receives Recipient's notice or such longer period as Recipient may specify in such notice.

- (4) Mutual Termination. This Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
- (5) Return of Property. Upon termination of this Agreement for any reason whatsoever, Recipient shall immediately deliver to OHA all of OHA's property that is in the possession or under the control of Recipient.
- (6) Effect of Termination. Upon termination of this Agreement, Recipient shall immediately cease all activities under this Agreement unless, in a written notice issued by OHA, OHA expressly directs otherwise.

**9. Insurance.**

Recipient shall maintain insurance as set forth in Exhibit C, attached hereto.

**10. Records Maintenance, Access.**

Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that OHA and the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for the longest of:

- a. Six years following final payment and termination of this Agreement;
- b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
- c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

**11. Information Privacy/Security/Access.**

If this Agreement requires or allows Recipient or, when allowed, its subcontractor(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Recipient or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, Recipient shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, "Information Asset" and "Network and Information System" have the meanings set forth in OAR 943-014-0305, as such rule may be revised from time to time.

**12. Assignment of Agreement, Successors in Interest.**

- a. Recipient shall not assign or transfer its interest in this Agreement without prior written consent of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by OHA. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in this Agreement.
- b. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

**13. Resolution of Disputes.**

The parties shall attempt in good faith to resolve any dispute arising out of or related to this Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

**14. Subcontracts.**

**RECIPIENT SHALL NOT ENTER INTO ANY SUBCONTRACTS FOR ANY PART OF THE PROGRAM SUPPORTED BY THIS AGREEMENT WITHOUT OHA'S PRIOR WRITTEN CONSENT.** In addition to any other provisions OHA may require, Recipient shall include in any permitted subcontract under this Agreement provisions to ensure that OHA will receive the benefit of subcontractor activity(ies) as if the subcontractor were the Recipient with respect to Sections 1, 2, 3, 6, 7, 9, 10, 11, 12, 14, 15, and 16 of this Exhibit B. OHA's consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.

**15. No Third Party Beneficiaries.**

OHA and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**16. Severability.**

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**17. Notice.**

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal

delivery, facsimile, e-mail, or mailing the same, postage prepaid to Recipient or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five days after the date of e-mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Recipient, or on the next business day if transmission was outside normal business hours of the Recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**OHA:** Oregon Health Authority  
Health Systems Division  
500 Summer St SE, E86  
Salem, Oregon 97301

**18. Headings; Interpretation.**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement. This Agreement will be interpreted according to its fair meaning and not strictly for or against any party to this Agreement. Any provision of this Agreement that would reasonably be expected to survive its termination or expiration will do so, including but not limited to Sections 1, 2, 5, 7, 8(e)(5), 13, 15, 16, 17, 18, and 19 of Exhibit B of this Agreement.

**19. Amendments; Waiver; Consent.**

No amendment, waiver, or consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, approved by the Oregon Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

**20. Prohibition on Supplanting.**

Grant funds may not supplant or replace other funds that have been contracted for the same purpose. Recipient shall ensure that the activities provided under this Agreement will be in addition to, and not in substitution for, comparable activities.

**21. Merger Clause.**

This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement. The obligations contained in this Agreement shall not be merged with the Covenant and other documents provided for in Exhibit A Part 3.

## EXHIBIT C

### Insurance Requirements

Recipient shall require its first tier contractor(s) (each, a “Contractor”) that are not units of local government as defined in ORS 190.003, if any, to obtain the insurance specified in this Exhibit C prior to performing under this Agreement and maintain it in full force throughout the duration of this Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OHA. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

#### 1. WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state’s workers’ compensation law, Contractor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

#### 2. COMMERCIAL GENERAL LIABILITY:

**Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

#### 3. PROFESSIONAL LIABILITY:

**Required**

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Contractor and Contractor’s subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included

in the Professional Liability insurance coverage, or the Recipient shall provide Tail Coverage as stated below.

**4. EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**5. ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Insurance must have an endorsement providing that the insurer may not invoke sovereign immunity up to the limits of the policy in any court. The Additional Insured endorsement with respect to liability arising out of Contractor's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

**6. WAIVER OF SUBROGATION:**

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the OHA or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the OHA has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

**7. TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Contractor's completion and OHA's acceptance of all Services required under this Agreement, or, (ii) OHA or Recipient's termination of this Agreement, or, (iii) The expiration of all warranty periods provided under this Agreement.

**8. CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to OHA Certificate(s) of Insurance for all required insurance before conducting any activities required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance

OHA has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

**9. NOTICE OF CHANGE OR CANCELLATION:**

The Contractor or its insurer must provide at least 30 days' written notice to OHA before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**10. INSURANCE REQUIREMENT REVIEW:**

Recipient agrees to periodic review of insurance requirements by OHA under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and OHA.

**11. STATE ACCEPTANCE:**

All insurance providers are subject to OHA acceptance. If requested by OHA, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to OHA's representatives responsible for verification of the insurance coverages required under this Exhibit C.

**EXHIBIT D**

| <b>BH Housing Focus:</b> Low barrier, goal focused (time limited, for example 6-12 months) supported housing. Individuals must be actively engaged with the Clackamas County Community Restoration program for admission/waitlist consideration and/or actively being served by the Clackamas County Choice team. Congregate/closely located units are a primary goal, however scattered sites may be an option as well. | <b>Option A- Description and Use of Funds Below: Hotel (Purchase)</b>  | <b>Option B-Description and Use of Funds Below: County Owned Property (see housing inventory list)</b>   | <b>Option C- Description and Use of Funds Below: Other Community Partner(s) Proposal through a competitive RFP process</b> |
|--|--|--|--|
| <b><i>Cost estimate for relevant section below for each Option (if applicable)</i></b>   | <b>Total Grant Amount available: \$4,704,837.17</b>  | <b>Total Grant Amount available: \$4,704,837.17</b>  | <b>Total Grant Amount available: \$4,704,837.17</b>  |
| <b><i>Repurpose or build new supported housing units</i></b>   | N/A  | Purchase of potential property ranges between \$300,000 and \$450,000 but can also be obtained, if purchased by a non-profit below market value. Total amount available \$3,000,000. | Through a formal RFP process allow any eligible provider to submit a proposal within the allowable resources available     |
| <b><i>Operational and admin costs to manage housing including cost estimates</i></b>   | \$60,000 Project Manager for 6 months; Peers (4)- \$90,000; Social Worker cost - (2)\$100,000; On-site Manager cost (1)- \$110,000. Total: \$730,000 | This will depend on the size of the operation. Total amount available: \$694,000   | Through a formal RFP process allow any eligible provider to submit a proposal within the allowable resources available     |



|  |   |  |  |
|--|---|--|--|
| <b><i>Housing support services-Other Funding available</i></b>                                   | Partner with Housing Authority of Clackamas County (HACC) on accessing Supportive Housing Services. Expectation that an array of in-site services are available including peers and a 'house manager'.  | Partner with HACC on accessing Supportive Housing Services. Expectation that an array of in-site services are available including peers and a 'house manager'.                         | Partner with HACC on accessing Supportive Housing Services. Expectation that an array of in-site services are available including peers and a 'house manager'.                               |
| <b><i>Planning, coordinating, siting, purchasing, or renovating including cost estimates</i></b> | Purchase Econolodge at \$3.2M; some renovations may be needed, available funding for renovations: \$724,837.  | Pursue a rent-to-own with HACC or outright purchase. Possible renovating budget available: \$960,837   | Through a formal RFP process allow any eligible provider to submit a proposal within the allowable resources available   |
| <b><i>Subsidy for short term shelter beds</i></b>  | N/A   | N/A  | N/A  |
| <b><i>Long Term rental assistance</i></b>  | N/A   | N/A  | N/A  |
| <b><i>Outreach and engagement items such as food or clothing including cost estimates</i></b>    | Up to \$50,000 annually for outreach and engagement services for this type of service and population.   | Up to \$50,000 annually for outreach and engagement services for this type of service and population.  | Up to \$50,000 annually for outreach and engagement services for this type of service and population.  |
| <b><i>Expected Impact and Anticipated number of clients served for each housing Option</i></b>   | Purchase of hotel could provide 25-30 individual rooms. Focus would be on shorter term, goal orientated housing and supports so number of individuals served annually will depend on the 'turn over' of these rooms. This option will allow us to | Depends on the number of homes/units purchased. Would set a goal of 15-25 individuals housed/served at any given time if properties can be purchased within a smaller geographic area. | Through a formal RFP process allow any eligible provider to submit a proposal within the allowable resources available. The goal would be 15-25 individuals housed/served at any given time. |

|   |   |  |   |
|---|---|--|---|
|   | house individuals the most quickly.   |  |   |
| <b>Additional comments and dependencies</b> | Clackamas County will issue an RFP to interested community-based providers for the purchase of the hotel and associated support services. | HACC currently has over 100 properties that they will be selling-either at market value or under market value to a non-profit. The timeliness of selling these properties will require approval by the Board of County Commissioners | Any delay would only be based on how quickly county procurement can assign a coordinator and providing enough time for eligible community-based providers to respond. |
| <b>Approximate Total Cost option:</b>       | \$ 4,704,837.17   | \$4,704,837.17   | Not to exceed the total grant amount of \$4,704,837.17, with the goal to fund 1-2 projects  |

**1. FURTHER BUDGET UPDATE REQUIREMENTS:**

Recipient shall submit a proposed updated Grant budget for OHA’s approval before submitting a quarterly Expenditure Report for approval as required under Exhibit A, Part 2, Section 1d. Such a budget shall designate the selected option from the above three tentative budgets when that choice has been made and such budget shall provide the respective updated information for the table above for the selected option.

Recipient may make proposed Grant budget amendments and request OHA approval of the Grant budget as the Recipient refines the cost estimates over time. Recipient shall make such amendments in accordance with Exhibit A, Part 2, Section 1.

**2. SUBCONTRACTOR REQUIREMENTS:** Recipient shall comply with the requirements of Section 14 of Exhibit B of this Agreement before using any grant funds for subcontractor costs. That section provides in part that “RECIPIENT SHALL NOT ENTER INTO ANY SUBCONTRACTS FOR ANY PART OF THE PROGRAM SUPPORTED BY THIS AGREEMENT WITHOUT OHA’S PRIOR WRITTEN CONSENT.” Inclusion of budgeted subcontractor names and projects in this Exhibit D budget does not constitute OHA’s required prior written consent.

# ATTACHMENT 1

\*

After Recording Return to:

- 1 Oregon Health Authority
- 2 Heath Systems Division
- 3 500 Summer St SE, E86
- 4 Salem, OR 97301

SPACE ABOVE FOR RECORDER'S USE

SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE  
(for use with Oregon governmental entity Declarants)

**STATE OF OREGON  
OREGON HEALTH AUTHORITY**

**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (this “**Declaration**”) is made and entered into this [\_\_] day of [\_\_\_\_] 2022 (the “**Effective Date**”) by and between [\_\_\_\_], an Oregon [\_\_\_\_] (“**Declarant**”) and the State of Oregon (“**State**”), acting by and through the Oregon Health Authority and its Health System Division (“**OHA**”) pursuant to House Bill 5202, section 364. OHA and Declarant may be referred to herein jointly as the “**Parties**” or individually as a “**Party**”.

**RECITALS**

**A.** Whereas, the Oregon State Legislature’s Joint Committee On Ways and Means stated in the Budget Report and Measure Summary for House Bill 5502 that the OHA was appropriated funds “for distribution to community mental health programs (CMHP) and related administrative support in OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”

**B.** Whereas, the OHA issued a Request for Applications (RFA) to the CMHPs for receiving this funding and Declarant applied for a grant award.

**C.** Declarant is a CMHP and was awarded an amount not to exceed [\_\_\_\_] (\$[ ]) (the “**Grant**”) from the State General Fund for the purpose of increasing behavioral health housing by [\_\_\_\_] (collectively, the “**Improvements**”) situated on certain real property located in the city of [\_\_\_\_], [\_\_\_\_] County (the “**County**”), State of Oregon, as more particularly described in Exhibit A attached hereto (the

“**Property**”). The Property, together with the Improvements, is referred to herein as the “**Project**” and is further described in Exhibit B attached hereto.

**D.** Terms and conditions of the Grant for the Project are set forth in that certain Intergovernmental Grant Agreement dated [\_\_\_\_], 2022 by and between the Parties (the “**Grant Agreement**”).

**E.** A condition of the Grant Agreement provides that to the extent that grant funds are to be used for certain purchases or renovations of real property, Declarant is required to follow additional OHA procedures. Pursuant to that condition, provided in Exhibit A, Part 3 of the Grant Agreement, OHA has required Declarant to execute this Declaration, as a condition to Declarant’s use of Grant funds for the purchase or renovation of real property for purposes of the Project.

**F.** The Parties desire that this Declaration be recorded in the relevant county records at Declarant’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

## **AGREEMENT**

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

### **1. INCORPORATION.**

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

### **2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.**

Declarant represents, warrants and covenants that:

**2.1. Organization and Authority.** Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

**2.2. Use of Grant Funds.** Declarant has used or will use the Grant funds only for the Project costs as provided for in the Grant Agreement.

**2.3. Full Disclosure.** Declarant has disclosed in writing to OHA all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

**2.4. Pending Litigation.** Declarant has disclosed in writing to OHA all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any

court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

**2.5. No Defaults.**

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

**2.6. Compliance with Existing Agreements and Applicable Law.** The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant’s property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant’s properties or operations.

**2.7. Governmental Consent.** Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

**2.8. Responsibility.** Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Grant Agreement and acknowledges that OHA has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

**3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.**

Declarant also represents, warrants, and covenants that:

**3.1. Fair Housing and Other Civil Rights Compliance.** Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

**3.2. Use Restrictions.**

(a) [ \_\_\_\_\_ ]

(b) \_\_\_\_\_]

(c) **Use Restriction Period.** For a period of twenty (20) years from December 31<sup>st</sup> of the year that the Project is completed or until **December 31, 2042**, whichever is later (the “**Use Restriction Period**”), Declarant is required to provide and comply with the requirements of the \_\_\_\_\_  
\_\_\_\_\_,  
together, the “**Use Restrictions**”.

**3.3. Habitability; Other Compliance.** Throughout the Use Restriction Period, Declarant will manage the Project in a safe, sanitary, and habitable condition satisfactory to OHA and in accordance with applicable zoning and code requirements.

**3.4. Financial Records.** Declarant shall keep accurate books and records regarding use of the Grant and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

**3.5. Inspections; Information.** Declarant shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant’s records regarding receipts, disbursements, contracts, investments and any other related matters.

**3.6. Reports.**

(a) Declarant shall prepare and electronically submit written quarterly reports that satisfy OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

(b) The quarterly reports are due to OHA no later than April 15 (January 1-March 31), July 15 (April 1- June 30), October 15 (July 1- September 30), and January 15 (October 1-December 31) each year.

(c) The quarterly reports shall provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

(d) Declarant shall supply any other reports and information related to the Project as the State may reasonably require.

**3.7. Records Maintenance.** Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the Grant throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by OHA.

**3.8. Corrective Action.** As a consequence of its monitoring, review of quarterly reports or otherwise, OHA may identify deficiencies in Declarant's compliance with this Declaration. OHA may require action by Declarant (satisfactory to OHA) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by OHA of such deficiencies unless earlier correction is required by OHA to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to OHA in its sole discretion. Nothing in this Section 3.8 is intended or may be construed to impose any duty on OHA to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

**3.9. Insurance, Damage.** Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities.

#### **4. FURTHER ASSURANCES.**

**4.1. Further Acts.** Declarant, at any time upon request of OHA, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHA may require in its sole discretion to protect OHA's rights under this Declaration.

**4.2. Reliance.** OHA may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

#### **5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.**

**5.1. Inducement.** Declarant represents, covenants and warrants that the issuance to it of the Grant described herein by OHA is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Grant Agreement and this Declaration. In consideration of the issuance of the Grant, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that OHA has relied on this Declaration in determining to issue the Grant.

#### **5.2. Covenants; Equitable Servitudes.**

(a) OHA and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHA's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.



(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (*other than a residential rental agreement or residential lease for a Housing Unit*) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHA, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

### **5.3. Burden and Benefit.**

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHA) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

**5.4. Right of Modification.** OHA may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in OHA's sole discretion to be to the benefit of OHA, the Project, or OHA efforts to provide or maintain safe and sanitary conditions of the Project *and affordability of the Housing Units in the State of Oregon*. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHA representative.

## **6. GENERAL PROVISIONS.**

### **6.1. Compliance with Applicable Laws and Requirements.**

(a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project from time to time.

**(b) Contracts; Subcontracts.** Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.

**(c) Endurance of Obligations.** Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Grant funding is being provided.

## **6.2 Contribution.**

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against a liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Declarant (or would be if joined in the Third Party Claim ), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Declarant in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Declarant on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Declarant on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Declarant is jointly liable with the State (or would be if joined in the Third Party Claim), the Declarant shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Declarant on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Declarant on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Declarant’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

This Section shall survive expiration or termination of this Agreement.

## **6.3. Indemnification by Subcontractors.**

Declarant shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Declarant’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive expiration or termination of this Agreement.

**6.4. Time of the Essence.** Time is of the essence in the performance by Declarant of the terms of this Declaration.

**6.5. No Discrimination; Marketing.** Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

**6.6. Notice.** Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHA or Declarant at the following addresses:

If to OHA:  
[\_\_\_\_\_]

If to Declarant:  
[\_\_\_\_\_]

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

**6.7. No Third-Party Beneficiaries.** Unless and only to the degree expressly provided otherwise in this Declaration, OHA and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

**6.8. Declarant Status.**

(a) **Independent Contractor.** Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is not an officer,

employee or agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Declaration.

**(b) Declarant Responsible for Insurance Coverage.** Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

**(c) Non-Federal Employment Certification.** Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

**(d) Good Standing Certification.** Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees:

**(i)** Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

**(ii)** Has within a three (3) year period preceding this Declaration been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

**(iii)** Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(ii) of this Section;

**(iv)** Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

**(v)** Is included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

**6.9. Termination.** OHA may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

**(a)** If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Grant funding; or

**(b)** If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Grant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Grant funding identified in this Declaration from the planned funding source(s); or

- (c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or
- (d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or
- (e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, or any other applicable Grant document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or
- (f) If OHA determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or
- (g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.
- (h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to OHA or to Declarant hereunder, at law, or otherwise.

**6.10. Declarant Default.** Any of the following constitutes an “**Event of Default**” of Declarant:

- (a) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to OHA related to this Grant or the Project.
- (b) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by OHA, or such longer period as OHA may agree to in writing, if OHA determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.
- (c) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(d) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

**6.11. OHA Default.** OHA will be in default under this Declaration if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Declaration.

**6.12. Remedies.**

(a) **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by OHA, repay to OHA \$ [\_\_\_\_\_], multiplied by a fraction, the numerator of which is 20 minus the number of full years that have transpired between the year the Project is completed and the year of Payee's demand and the denominator of which is 20.

(b) **Deficiencies.** OHA may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

(c) **Extension of Use Restriction Period.** OHA may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which OHA determines the Declarant to be in material noncompliance with any of the terms of this Declaration.

(d) **Additional Remedies.** If the Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by the Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHA determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHA, or if such default runs for a period of thirty (30) days from the date the Declarant should, with due diligence, have discovered such default, then OHA may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by OHA, OHA may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHA determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHA, an Event of Default shall be deemed to occur and OHA

may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHA may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

- i. By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of OHA under this Declaration;
- ii. Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;
- iii. Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days written demand) require the repayment of all or part of any disbursed Grant funds or other funding assistance provided by OHA to Declarant with respect to the Project;
- iv. Declare Declarant, its owners, principals, employees, and agents ineligible to receive further OHA funds or other OHA financial assistance, including with respect to other projects or requests for same, for such period as OHA determines in its sole discretion;
- v. Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Declarant;
- vi. Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;
- vii. Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to OHA within ten (10) days of any presentment of charges for same; and
- viii. Take such other action under this Declaration, at law, in equity, or otherwise as may be available to OHA.

**(e) Survival of Remedies; Remedies Not Exclusive; Non-Waiver.** The rights and remedies of OHA provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHA to enforce any provision of this Declaration will constitute a waiver by OHA of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**6.13. Severability.** If any term or provision of this Declaration is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Declaration did not contain the particular term or provisions held to be invalid.

**6.14. Survival of Obligations.** The obligations of Declarant as set forth in this Declaration will survive

the expiration or termination of the Grant Agreement.

**6.15. Attorney Fees.** Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHA by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

**6.16. Construction.** The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

**6.17. Captions.** The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

**6.18. Execution and Counterparts.** This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

**6.19. Governing Law; Venue: Consent to Jurisdiction.** This Declaration will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") related to this Declaration will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHA or the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. OHA and the State of Oregon expressly reserve all sovereignty rights. **DECLARANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

**6.20. Merger Clause.** This Declaration, along with the Grant Agreement constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

**6.21. No Limitations on Actions of OHA in Exercise of Its Governmental Powers.** Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of OHA in the exercise of its governmental powers. It is the express intention of the Parties hereto that OHA will retain the full right



and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will OHA have any liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, OHA and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

**OHA:** **STATE OF OREGON**, acting by and through its **OREGON HEALTH AUTHORITY**,

**By:** \_\_\_\_\_

STATE OF OREGON            )  
  : ss  
County of Marion            )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2022,  
by \_\_\_\_\_, for and on behalf of the State of Oregon, acting by and through its  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

**DECLARANT:**

**[Name of Grant Recipient]**

**By:** \_\_\_\_\_

STATE OF OREGON            )  
  : ss  
County of [\_\_\_\_\_])

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2022,  
by \_\_\_\_\_, for and on behalf of \_\_\_\_\_ acting by and through its  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

[\_\_\_\_\_]

**EXHIBIT B**  
**Project Description**

**Use Restrictions:**

A. [\_\_\_\_\_]

B. [\_\_\_\_\_]...